

E-filed 3/15/2012

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

K. OLIVER,

No. C 12-0943 RS

Plaintiff,

**ORDER DENYING MOTION TO
RELATE CASES, WITHOUT
PREJUDICE**

v.

MICROSOFT CORPORATION,

Defendant.

Plaintiff has filed a motion in this action seeking to have *Zody v. Microsoft*, C 12-0942 YGR related hereto and reassigned to the undersigned. Both this case and *Zody* were originally filed in state court, and were removed here on February 24, 2012. Pursuant to Civil Local Rule 3-12(b), a motion to relate is to be filed in the “earliest filed case,” and, if granted, results in reassignment of the later-filed case to the judge presiding over the older case. Plaintiff recognizes that in this instance, *Zody* bears the lower case number, reflecting that it was removed to this court first. Plaintiff contends that this action nevertheless qualifies as the “earliest filed,” because it was filed in state court two days before *Zody* was filed in that court. The two removal notices were presented to the Clerk’s Office in this court at essentially the same time, and it was apparently mere happenstance that this action was on top, and processed first.

Construing the term “earliest filed case” in Rule 3-12(b) as referring to filing dates in other courts would in at least some instances undermine the purposes served by the rule. For example, if a particular judge became familiar with a case that had been pending in this court for some time, it

1 would make no sense to reassign it to another judge who happened to draw a newly-removed action
2 that had been filed in state court on some date prior to the filing or removal of the lower numbered
3 case. While the present situation does not present a similar concern given that this action and *Zody*
4 are both new to this court, it would not be appropriate to assign different meanings to the phrase
5 “earliest filed case” depending on the particular circumstances. Additionally, under the random
6 assignment system, a defendant removing multiple cases cannot deliberately seek a strategic
7 advantage by selecting the order in which to present notices of removal for filing.

8 Accordingly, *Zody* is the “earliest filed case” within the meaning of Rule 3-12(b), and the
9 motion to relate it to this action must be denied. This ruling is without prejudice to the filing of a
10 motion in *Zody* to have this case related thereto. The question of whether the two actions qualify as
11 “related cases” under the rule had not been considered or decided.

12
13 IT IS SO ORDERED.

14
15 Dated: March 15, 2012

16
17 
18 RICHARD SEEBORG
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28